

TITLE 44
LABOR

CHAPTER 14
EMPLOYERS' LIABILITY ACT

44-1401. CASES WHERE EMPLOYER DEEMED LIABLE -- ASSUMPTION OF RISK BY EMPLOYEE. Every employer of labor in or about a railroad, street railway, factory, workshop, warehouse, mine, quarry, engineering work, and any building which is being constructed, repaired, altered, or improved, by the use and means of a scaffold, temporary staging, or ladders or is being demolished, or on which machinery driven by steam, water or other mechanical power is being used for the purpose of construction, repair or demolition thereof, shall be liable to his employee or servant for a personal injury received by such servant or employee in the service or business of the master or employer within this state when such employee or servant was at the time of the injury in the exercise of due care and diligence in the following cases:

1. When the injury was caused by reason of any defect in the condition of the ways, works or machinery connected with or used in the business of the employer which arose from or had not been discovered or remedied owing to the negligence of the employer or of any person in the service of the employer and entrusted by him with the duty of seeing that the ways, works or machinery were in proper condition.

2. When the injury was caused by reason of the negligence of any person in the service of the employer entrusted with and exercising superintendence whose sole or principal duty is that of superintendence, or in the absence of such superintendent, of any person acting as superintendent with the authority and consent of such employer.

3. When such injury was caused by reason of the act or omission of any person in the service or employment of the master or employer, done or made in obedience to the rules and regulations or by-laws of the master or employer, or in obedience to particular instructions given by any person delegated with the authority of the master or employer so to instruct.

4. When such injury was caused by the negligence of any person in the service or employment of the master or employer who has charge of any signal or telegraph office directing the movement of any locomotive engine, train or car upon a railroad, or any part thereof, at the time such person was injured.

5. That [in] any action brought against any employer or master under or by virtue of any of the provisions of this chapter to recover damages for injuries to or death of any of its employees, such employee shall not be held to have assumed the risks of his employment in any case where a violation by such employer or master of any statute enacted for the safety of employees contributed to the injury or death of such employee.

6. An employee, by entering upon or continuing in the service of the employer, shall be presumed to have assented to the necessary risks of the occupation or employment, and no others. The necessary risks of the occupation or employment shall, in all cases arising after this chapter takes effect, be considered as including those risks, and those only, inherent in the nature of the business, which remain after the employer has exercised due care in providing for the safety of his employees, and has complied with the laws affecting or regulating such business or occupation for the greater safety of such employees.

[(44-1401) 1909, p. 34, 1st par. of sec. 1; I.C.A., sec. 43-2001.]

44-1402. EMPLOYEE'S KNOWLEDGE OF DEFECT OR NEGLIGENCE -- WHEN EMPLOYER EXCUSED THEREBY. The master or employer shall not be liable under any of the provisions of section [44-1401](#) if the servant or employee knew of the defect or negligence causing the injury, or by the exercise of reasonable care could have known of the defect or negligence causing the injury and failed within a reasonable time to give notice thereof to the master or employer, or to some person superior to himself engaged in the service or employment of the master or employer who had entrusted to him some general superintendence, unless the master or such superior already knew of such defect or negligence.

[(44-1402) 1909, p. 34, 2d par. of sec. 1; I.C.A., sec. 43-2002.]

44-1403. EMPLOYEE'S KNOWLEDGE OF INCOMPETENCY OF COEMPLOYEE -- WHEN EMPLOYER EXCUSED THEREBY. The master or employer shall not be liable under any of the provisions of section [44-1401](#) where the injury to the employee was caused by the incompetency of a coemployee, and such incompetency was known to the employee injured, and the employee injured failed within a reasonable time to give notice thereof to the master or employer, or to some person superior to himself engaged in the service or employment of the master or employer who had entrusted to him some general superintendence, unless the master or employer or such superior already knew of such incompetency of such coemployee, and such master or employer failed or refused to discharge such incompetent employee or failed or refused to investigate the alleged incompetency of the coemployee and discharge him if found incompetent.

[(44-1403) 1909, p. 34, 3d par. of sec. 1; I.C.A., sec. 43-2003.]

44-1404. INJURY OR DEATH OF MINOR -- WHO MAY MAINTAIN ACTION. In the case of injury to an employee who is a minor, then the father, or in case of his death or the desertion of his family, the mother may maintain an action for injuries received for which the master is liable under the provisions of this chapter unless the said minor be married, in which case the said minor may maintain an action in his own name for the said injuries, and a guardian may under like circumstances maintain an action for the injury of his ward, and in the event the said minor be not married and have no father or mother dependent upon him, the said action may be maintained by a guardian to be appointed by the court for the benefit of the said minor. In case the said injuries result in the death of the said minor and the said minor be married, then the action may be maintained by the widow and guardian of the said minor's children, if any there be, and if the said minor be unmarried, then the father or in case of his death or desertion of his family, the mother may maintain an action for the death of said minor child resulting under such circumstances; and if neither father nor mother survive the said minor, the action may be brought by the next of kin who at the time of his death were dependent upon his wages for support, or by the personal representatives of the minor for the benefit of such next of kin who at the time of death of the said minor were dependent upon his wages for support.

[(44-1404) 1909, p. 34, sec. 2; I.C.A., sec. 43-2004.]

44-1405. DEATH OF ADULT EMPLOYEE -- WHO MAY MAINTAIN ACTION. In case the employee be not a minor and the injuries result in his death, then an action

may be maintained by the widow of the deceased, or if he leaves no widow, his next of kin who at the time of his death were dependent upon his wages for support, or by his personal representatives for the benefit of his heirs or next of kin for damages against the employer under the circumstances mentioned in this chapter.

[(44-1405) 1909, p. 34, sec. 3; I.C.A., sec. 43-2005.]

44-1406. DAMAGES IN CASE OF DEATH -- MAXIMUM AMOUNT -- EXEMPTION FROM DEBTS OF DECEASED. The amount of damages to be recovered in case of death shall not exceed the sum of five thousand dollars (\$5000.00). The damages recovered on account of death shall not be subject to the debts of the deceased.

[(44-1406) 1909, p. 34, sec. 4; I.C.A., sec. 43-2006.]

44-1407. NOTICE PREREQUISITE TO MAINTENANCE OF ACTION. No action for the recovery of compensation for injuries or death under this chapter shall be maintained unless notice of the time, place and cause of the injury is given to the employer within one hundred and fifty (150) days, and the action is commenced within one (1) year after the occurrence of the accident causing the injury or death. The notice required by this section shall be in writing, and shall be signed by the person injured or by some one in his behalf, but if from physical or mental incapacity it is impossible for the person injured to give notice within the time provided in this section, he may give the same within ten (10) days after such incapacity is removed. In case of his death without having given such notice, his executor or administrator or widow or next of kin may give such notice within sixty (60) days after such death, but no notice under the provisions of this section shall be deemed to be invalid or insufficient solely by reason of any inaccuracy in stating the time, place or cause of the injury, if it be shown that there was no intention to mislead and the party entitled to notice was not in fact misled thereby. The notice required by this section shall be served in the same manner as required of the service of summons in civil actions.

[(44-1407) 1909, p. 34, sec. 5; I.C.A., sec. 43-2007.]